

REMARKS

Applicants would like to thank Examiner Foster for the telephone interview conducted on June 17, 2004.

In the Office Action of April 13, 2004, claims 8-10 were allowed.

Claims 1 and 3-7 were rejected under 35 U.S.C. §112, 2nd paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. In the present amendment, Applicants have amended claim 1 in order to correct for any §112 deficiencies and respectfully submit that this claim, along with claims 3-7, do not suffer from any §112 deficiencies.

Claims 1 and 5 were rejected under 35 U.S.C. §102(b) as being anticipated by Paikoff et al. (United States Patent No. 4,523,679).

Claims 11-19 were rejected under 35 U.S.C. §102(b) as being anticipated by Ross et al. (United States Patent No. 5,318,543).

Claims 1 and 5-7 were rejected under 35 U.S.C. §102(b) as being anticipated by Kalinski (United States Patent No. 5,311,990).

Claims 3 and 4 were indicated as allowable if rewritten to overcome the rejection under 35 U.S.C. §112 and to include all of the limitations of the base claim and any intervening claims. In the present amendment, Applicants have rewritten Claim 3 such that it is an independent claim that incorporates the subject matter of Claim 1 and corrects for any possible §112 deficiencies and is in condition for allowance. Claim 4 depends from Claim 3 and Applicants respectfully submit that Claim 4 is also in condition for allowance.

Claims 20 and 21 were objected to as being dependent upon a rejected base claim, but otherwise allowable if rewritten in independent form to include all of the limitations of the base claim and any intervening claims. In the present amendment,

Applicants have rewritten Claim 20 such that it is now in independent form and includes the subject matter of Claim 11 and submit that this claim is in condition for allowance. Claim 21 depends from Claim 20 and Applicants respectfully submit that Claim 21 is also in condition for allowance.

Applicants respectfully submit that Claim 1 defines over both Paikoff and Kalinski. Respectfully, the cited references do not disclose a surgical kit that includes a first, second and third planar surface that are all at least partially outside of the perimeter defined by one another. Support for this claim amendment may be found in at least Figure 8 of the drawings that shows the first, second, and third planar surfaces all at least partially outside of the perimeter defined by one another. Applicants have amended page 13 of the specification in order to include this structure in words in the detailed description of the application.

Paikoff discloses a kit that includes a first planar surface that defines the lip of the tray, a second planar surface with a recess capable of holding syringe 18, and a third planar surface with a recess 18 capable of holding needle caps as shown in Figure 2B. However, the first planar surface, that is the lip of the tray, has a perimeter that completely surrounds both the second and third planar surfaces.

Referring now to Kalinski, this reference discloses in Figure 1 a blister package that has a shoulder 95 that may be described as a first planar surface, a second planar surface that may be the tops of the pedestals that hold the gun-shaped article therebetween, and a third planar surface that is floor 85 that includes a recess for holding a cord near the center of the tray. However, the first planar surface, shoulder 95, has a perimeter that completely surrounds both the second and third planar surfaces.

In stark contrast, Claim 1 of applicants application calls for a surgical kit in which the first, second and third planar surfaces are all at least partially outside of the perimeter defined by one another. Any other possible surface in Paikoff or Kalinski that could conceivably be considered to be a planar surface that includes a recess is likewise distinguished from Claim 1 in that Claim 1 also calls for articles in at least one of the upper planar surfaces to be removed from the tray prior to access being provided to articles in at least one lower planar surface.

The structure set forth in Claim 1 provides for a surgical kit that is more compact in design in that the surgical articles are configured so that an article in one of the upper planar surfaces must be removed in order to provide access to an article in a lower planar surface. Provision of at least three planar surfaces that are all at least partially outside of the perimeter defined by one another allows for this type of compact, space-saving design and functionality.

As such, applicants respectfully submit that Claim 1 defines over both Paikoff and Kalinski and is in condition for allowance. Also, all claims that depend from Claim 1 (Claim 5-7) are also in condition for allowance. The rejections to Claims 5-7 are made moot due to the allowance of Claim 1.

Claim 11 was rejected in the Office Action of April 13, 2004, in view of Ross for failing to claim structure as opposed to intended use (see paragraph 6 of the Office Action dated April 13, 2004). Applicants have amended Claim 11 in order to specifically call for a container that at least partially fits within the tray and rests upon at least one of the plurality of planar surfaces while leaving at least one recess in the planar surface exposed. Referring to Ross, it may be seen that the sealed pouch 20 completely covers both of the recesses that hold the syringes 17 and 27. As such, the structure of Claim 11 defines over that of Ross and is beneficial in providing for a surgical kit that allows

the user to more easily identify articles within the kit without having to remove articles therefrom. As such, applicants respectfully submit that Claim 11 defines over Ross and is in condition for allowance. Further, all claims that depend from Claim 11 (Claims 12-19) are also in condition for allowance. The rejections to Claims 12-19 are made moot due to the allowance of Claim 11.

Claim 1 was also amended in order to avoid any confusion as to whether the surgical articles are positively claimed and to ensure that any possible confusion regarding antecedent basis is avoided.

Applicants respectfully submit that all pending claims are allowable and that the application is in condition for allowance. Favorable action thereon is respectfully requested. The Examiner is encouraged to contact the undersigned at his convenience to resolve any remaining issues.

Respectfully submitted,

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